IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 27

F. J. GUNTHER,

Petitioner,

vs.

SAN DIEGO & ARIZONA EASTERN RAILWAY COMPANY,

Respondent.

On Writ of Certiorari to the United States Court of Appeals For The Ninth Circuit

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF OF THE RAILWAY LABOR EXECUTIVES' ASSOCIATION AS AMICUS CURIAE.

CLARENCE M. MULHOLLAND
741 National Bank Building
Toledo, Ohio 43604

EDWARD J. HICKEY, JR.
620 Tower Building
Washington, D. C. 20005

RICHARD R. LYMAN
741 National Bank Building
Toledo, Ohio
Attorneys for Railway Labor Executives' Association As Amicus Curiae

Of Counsel:

MULHOLLAND, HICKEY & LYMAN
741 National Bank Building
Toledo, Ohio 43604

Dated at Toledo, Ohio, this
21st day of September, 1965

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The Railway Labor Executives' Association respectfully moves the Court for leave to file a brief as *amicus curiae* in the above entitled action, consent to the filing of such brief having been requested from the parties hereto, and having been refused by the respondent.

The Railway Labor Executives' Association is a voluntary unincorporated association, with which are affiliated the following standard national and international railway labor organizations:

American Railway Supervisors' Association
American Train Dispatchers' Association
Brotherhood of Locomotive Firemen and Enginemen
Brotherhood of Maintenance of Way Employes

Brotherhood Railway Carmen of America
Brotherhood of Railroad Signalmen of America
Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes
Brotherhood of Railroad Trainmen
Brotherhood of Sleeping Car Porters
Hotel & Restaurant Employees and Bartenders International Union
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers
International Brotherhood of Electrical Workers
International Brotherhood of Firemen & Oilers, Helpers, Roundhouse & Railway Shop Laborers
International Organization Masters, Mates & Pilots of America
National Marine Engineers' Beneficial Association
Order of Railway Conductors and Brakemen
Railway Employes' Department, AFL-CIO
Railroad Yardmasters of America
Seafarers' International Union of North America
Sheet Metal Workers' International Association
Switchmen's Union of North America
Transportation-Communication Employees Union

The principal office of said association is located at 400 First Street, N. W., Washington, D. C.

The foregoing organizations affiliated with the Railway Labor Executives' Association represent, for purposes of collective bargaining under the Railway Labor Act, the bulk of the nation's rail employees. Each of said affiliated organizations is a party to collective bargaining agreements between it and most of the railroads in the United States, governing the rates of pay, rules and working conditions

of said employees. Said organizations are under a statutory duty to exert every reasonable effort to make and maintain such agreements and to settle all disputes, whether arising out of the application of such agreements or otherwise. It is their further function under the statute to provide for the selection and compensation of the labor members of the National Railroad Adjustment Board, the administrative tribunal created by the Act for final determination of disputes growing out of grievances or out of the interpretation and application of such agreements which cannot be settled on the property of the carrier or carriers involved.

The fairness and effectiveness of the statutory procedures for the settlement of such disputes is thus of direct and vital concern to these organizations. The issues in this case place squarely at stake the ability of these organizations to continue to fulfill their aforementioned statutory duties, through utilization of the procedures for settlement of disputes and grievances which were established by the Railway Labor Act in an effort to obviate the constant industrial strife which prevailed when the only alternatives for resolving such matters were economic warfare or vexatious and prohibitive litigation.

The decision of the court below is the most recent of a series of lower federal court decisions refusing to accord finality to the awards of the National Railroad Adjustment Board, and expressly rejecting, with respect to railroad employees, the concept of compulsory arbitration of minor labor disputes. Such decisions, in subjecting railroad employees to the vicissitudes of completely relitigating claims upon which they have prevailed before the Board, represent a complete frustration of the Congressional aim of expeditious settlement of railroad labor disputes through

their submission to specialized administrative tribunals, with a minimum of intervention by the courts.

While we understand that the petitioner herein will present compelling arguments supporting the Board's award on the merits, on the basis of the record herein, we believe that the question of the right of the courts to review such awards on the merits at all, instead of according them the status and effect of arbitration awards, is of such far-reaching importance to the future of railroad labor relations as to justify independent presentation of the views of an organization which may fairly be said to represent railroad labor as a whole.

Respectfully submitted,

CLARENCE M. MULHOLLAND
741 National Bank Building
Toledo, Ohio 43604

EDWARD J. HICKEY, JR.
620 Tower Building
Washington, D. C. 20005

RICHARD R. LYMAN
741 National Bank Building
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Of Counsel:

MULHOLLAND, HICKEY & LYMAN
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PRELIMINARY STATEMENT — INTEREST OF THE AMICUS CURIAE

The decision of the court below, as well as those of other lower federal courts in recent cases involving refusal of carriers to comply with awards of the National Railroad Adjustment Board, have operated to completely frustrate the expeditious and fair settlement of so-called "minor disputes" in the railroad industry, through the statutory procedure which this Court has repeatedly described as compulsory arbitration. The unlimited opportunity afforded

carriers to completely relitigate disputes previously submitted to and decided by the Board not only prolongs their ultimate resolution, but defeats the objective of uniform interpretation of labor agreements in the railroad industry by an administrative tribunal composed of members having particular expertise in their field. And the inequity of a system of adjudication denying employees any opportunity for review of an adverse decision at the Board level, but affording carriers a completely new trial on all awards favoring the employees, is glaringly apparent.

The issues involved in this case are thus of vital concern to the organizations affiliated with the Railway Labor Executives' Association, on whose behalf this brief as *amicus curiae* is presented. As parties to collective bargaining agreements with most of the railroads in the country, said organizations have been increasingly frustrated in their ability to perform their statutory functions as bargaining representatives, by the situation created by decisions of the court below and other lower federal courts which have accepted the principle of complete trial *de novo*, on the merits, in actions to enforce awards of the Adjustment Board.

While this Court has not passed directly on the question of the scope of review of awards of the Board which is open to carriers in statutory enforcement actions, the principles which it has developed in a series of related cases under the Railway Labor Act are clearly at odds with the ruling of the court below. Thus this Court has found that railroad employees gave up the right to strike over grievances and contract claims in exchange for the system of compulsory arbitration of those minor disputes by the

Adjustment Board; that the Board's jurisdiction over those disputes is exclusive; that an employee whose claim is denied by the Board can obtain no review whatsoever on the merits of its decision; that nonmoney awards of the Board are final and binding; that in awards favoring employees the monetary aspects of the awards present issues wholly separable from the merits of a wrongful discharge claim; and that it was reserving for consideration in an appropriate case the question of the proper scope of review of monetary awards.

The decision of the court below is completely at odds with these principles. It accorded the carrier, respondent here, a complete review *de novo* on the merits of petitioner's claim for reinstatement; held that the Board's jurisdiction was limited to entertaining strict breach of contract claims, in spite of the statutory provision giving it jurisdiction over "grievances" as well; held that the Board could not consider custom and practice in connection with the contract claim, in spite of clear decisions of this Court to the contrary; disagreed with the Board's ruling as to the effect of particular provisions of the contract, holding that employees denied employment on grounds of physical disqualification had no right to challenge the fact or validity of such disqualification under contract provisions against discharge without just cause; and reversed the decision of the Board on the merits without even reaching or considering any monetary aspects of the award.

ARGUMENT

AWARDS OF THE NATIONAL RAILROAD ADJUSTMENT BOARD ARE FINAL AND BINDING ON THE MERITS OF DISPUTES SUBMITTED TO IT, AND ARE REVIEWABLE ONLY WITH RESPECT TO THEIR MONETARY ASPECTS IN ACTIONS SEEKING THEIR ENFORCEMENT.

Section 3, First (m) of the Railway Labor Act (45 U.S.C. § 153, First (m)) provides as follows with respect to awards of the National Railroad Adjustment Board:

> "The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, *and the awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award.* In case a dispute arises involving an interpretation of the award, the division of the Board upon request of either party shall interpret the award in the light of the dispute." (Emphasis supplied.)

The question of the interpretation of Section 3, First came before this Court in *Brotherhood of Railroad Trainmen, et al v. Chicago River & Indiana Railroad Company, et al,* 353 U.S. 30, 1 L. Ed. 2d 622 (1957). The Court considered the language of Section 3, First (m) of the statute and concluded that such language *unequivocally* made decisions of the Adjustment Board "final and binding" on both parties. The Court's findings on this point read as follows:

"Section 3, First (m) declares that

> "'The awards of the several divisions of the Adjustment Board . . . shall be final and binding upon both parties to the dispute. . . .'
>
> "This language is unequivocal. Congress has set up a tribunal to handle minor disputes which have not been resolved by the parties themselves. Awards of this Board are 'final and binding upon both parties.' And either side may submit the dispute to the Board." *Id.*, 353 U.S. at 34.

The Court then reviewed the legislative history of Section 3 and concluded that it was well understood by everyone concerned that the section provided for a system of *compulsory arbitration.* The Court summed up its conclusions on this legislative history as follows:

> "This record is convincing that there was a general understanding between both the supporters and the opponents of the 1934 amendment that *the provisions dealing with the Adjustment Board were to be considered as compulsory arbitration in this limited field.* Our reading of the Act is therefore confirmed, not rebutted, by the legislative history." (Emphasis added.) *Id.*, 353 U.S. at 39.

The Court further determined that the Norris-LaGuardia Act, 29 U.S.C. § 101, did not preclude the federal courts from issuing injunctions against strikes over such disputes, holding that while Congress in enacting Norris-LaGuardia had "acted to prevent the injunctions . . . from upsetting the natural interplay of the competing economic forces of labor and capital," the compulsory arbitration processes established by the Railway Labor Act were such that controversies subject to these processes "are not the

same as those in which the injunction strips labor of its primary weapon without substituting any reasonable alternative." *Id.*, 353 U.S. at 40-41.

To review the award of the Adjustment Board on the merits would completely negate the legal theory of an "arbitration" and render meaningless the Court's finding that Section 3 proceedings are a form of "compulsory arbitration" provided as a "reasonable alternative" to labor's right to strike.

That the awards of the Board are not merely advisory was plainly stated by the Court in the case of *Union P. R. Co. v. Price*, 360 U.S. 601, 3 L. Ed. 2d 1460 (1959), which held that a discharged employee whose claim for reinstatement had been rejected by the Board could not relitigate the validity of his discharge in an action at law for damages.

In the *Price* case, as in *Chicago River, supra,* the Court again reviewed the legislative history of the Railway Labor Act at considerable length, in its discussion of the Congressional intent in providing, in Section 3, First (m) of the Act, that awards should be "final and binding," and reached the following conclusion:

> "Plainly the statutory scheme as revised by the 1934 amendments was designed for *effective and final decision of grievances* which arise daily, principally as matters of the administration and application of the provisions of collective bargaining agreements." *Id.*, 360 U.S. at 616. (Emphasis supplied.)

The dissenting Justices in the *Price* case and in the case of *Pennsylvania R. Co. v. Day*, 360 U.S. 548, 3 L. Ed.